



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** KIME Plus, Inc.  
**File:** B-230190.3  
**Date:** November 1, 1988

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### **DIGEST**

Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire mess attendant services is justified where the contracting officer determines that discussions are necessary to ensure that offerors fully understand the services and the staffing required to adequately perform the contract and basis for award includes technical considerations in addition to price and price-related factors.

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### **DECISION**

KIME Plus, Inc., the incumbent contractor, protests the Air Force's method of procuring mess attendant services for Peterson Air Force Base, Colorado, under request for proposals No. F05604-88-R-0027. KIME Plus contends that the Air Force should have solicited sealed bids instead of competitive proposals.

We deny the protest.

KIME Plus contends that the Air Force was required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2301, et seq. (Supp. IV 1986), to solicit sealed bids because all of the requirements for sealed bidding were present in this procurement. KIME Plus asserts that in all material aspects the required services for this procurement are identical to those of previous procurements for mess attendant services at Peterson AFB, which KIME Plus has furnished since 1984 and which had employed sealed bids.

The Air Force contracting officer's written determination states that the decision to change to competitive proposals for this solicitation was made "in order to conduct discussions regarding technical and special requirements, such as contingency services, preparing and serving food in

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emergency situations (should they arise), snow and ice removal from the sidewalks of the dining facility, and maintenance of the food service equipment."

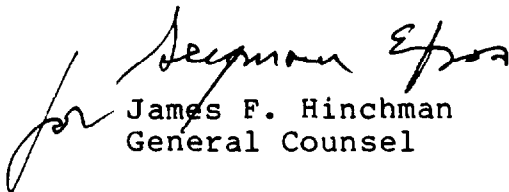
The Air Force adds that the requirements in the current solicitation differ in two significant aspects from the previous solicitation. For the first time, the solicitation includes a contract contingency clause which requires the contractor, in special emergency situations, to assume full food service production activities, including cooking, which go beyond the normal mess attendant services of preparing and serving meals. The Air Force states that the ability to evaluate offeror's proposals in this area and conduct discussions is essential to establish that offerors have a thorough understanding of this requirement. The second major area of difference is the increased qualifications of contractor personnel, in response to identified deficiencies in previous contract performance, apparently in such areas as listed in the contracting officer's written determination: maintenance of the food service equipment and snow and ice removal from sidewalks. The Air Force states that since the increased qualifications will result in higher wages paid to contractor personnel and will affect an offeror's computation of its price, discussions were needed to review and resolve any deficiencies in proposed contractor personnel qualifications prior to award.

Under CICA, 10 U.S.C. § 2304(a)(2)(A), an agency is required to solicit sealed bids only if: (1) time permits (2) award will be based on price (3) discussions are not necessary, and (4) more than one bid is expected to be submitted. The determination that any or all of these conditions is or is not present in any given procurement essentially involves the exercise of a business judgment by the contracting officer. Military Base Management, Inc., B-224115, Dec. 30, 1986, 66 Comp. Gen. \_\_\_, 86-2 CPD ¶ 720. Our review is limited to whether the contracting officer's determination was reasonable. See The Defense Logistics Agency--Request for Reconsideration, B-227055.2, Oct. 16, 1987, 67 Comp. Gen. \_\_\_, 87-2 CPD ¶ 365.

We find the Air Force contracting officer's determination not to conduct sealed bidding was permissible. The basis for award here is not limited to price-related factors, since the Air Force seeks to evaluate technical proposals containing specific information as to offerors' management organization, personnel qualifications, and plans for staffing, training and quality control. The fact that the Air Force has procured other mess attendant service requirements through sealed bidding does not establish that negotiated procedures are inappropriate, especially given

the inclusion of a new type of contingency clause and increased contractor personnel qualifications in this solicitation. See, e.g., TLC Systems and King Fisher Co., B-227842, B-227842.2, Oct. 6, 1987, 87-2 CPD ¶ 341. We also find the Air Force's concern for the need to assure that offerors fully understand the services and staffing necessary to perform the contract to be a legitimate basis for requiring discussions. In this regard, we have recognized that prior difficulties with contractor performance may serve as a basis for requiring discussions. Military Base Management, Inc., supra. Given the technical considerations beyond price-related factors in the solicitation and the Air Force's concomitant need to assure offeror understanding of the requirements through discussions, the decision to use competitive proposal procedures was reasonable.

The protest is denied.

for  
James F. Hinchman  
General Counsel